IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.949 of 1999
and
W.P.M.P.No.1298 of 1999

S.Ravi ... Petitioner

1. The Principal
   Mahathma Gandhi Dental College and Hospital,
   Old Secretariat Building,
   Pondicherry-605 001.

2. The Government of Pondicherry Union Territory,
   rep. by its Chief Secretary cum-Chairman,
   Pondicherry.

3. D.Karthik ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent appointing the third respondent to the post of Dental Mechanic in the Mahathma Gandhi Dental College and Hospital at Pondicherry pursuant to the Memorandum having reference No.I/MGDCH/A1/Estt/97-98 1016 dated 15.06.98 and quash the same and consequently direct the first and second respondent to select the petitioner to the said post.

For petitioner : Mr.Vinoth Subramani for
Mr.H.Mohamed Rafi
For RR 1 and 2 : Mr.K.K.Sasidharan,
Addl.Govt.Pleader(Pondy)
For R3 : Mr.K.Rajkumar

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ORDER

1.00: Transparency in case of public appointment is the minimum requirement of any Selection Board. If it is lacking, the intellectuals, qualified and eligible unemployed will be in the streets and the less talented are flooding in the public offices. It is high time to check such malpractice by the chief executives of the State.

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2.00: With heart burning and with fond hope that there shall be a full stop at least now to malpractice, I am proceeding further in this case.

3.00: Facts:

3.01: The petitioner is a Dental Mechanic having completed his two years Diploma course in the year 1989 at Madras Dental College and received training in Cast partial Dentures and Metal Bonded Ceramics in Chrome Cobalt Casting Laboratory attached to the Department of Prothetic Dendistry, Madras Dental College.

3.02: The petitioner has put in 7 years of experience in the field of Dental Mechanic, working at Salem Vinayaga Mission Dental College since 1989.

3.03: While so, the first respondent is named after the proud father of Nation as 'Mahathma Gandhi Dental College and Hospital' at Pondicherry. It is an autonomous institution under the direct control of Government of Pondicherry.

3.04: An advertisement was issued by the first respondent on 10.10.96 inviting applications to various posts including the post of Dental Mechanics.

3.05: As per the notification the qualifications required for filling the above post are:

i) S.S.L.C. Or its equivalent

ii) pass in Dental mechanic examinations conducted by any recognized institution.

Desirability of more than one year experience in a Dental College/Dental Wing recognized by the Dental Council of India. The advertisement also stipulates age limit as 18 to 30 years.

3.06: Admittedly, the petitioner is eligible and qualified. Hence, in response to his application, he was called for test. Practical test and oral interview was held. According to petitioner, he did well in practical test. It is stated that only three questions were put to him in the oral and he had answered all the three correctly. Hence, the petitioner was expecting favourable result. The results were published on the same evening. The result was shocking for the petitioner, while so the third respondent is most delighted man. He was selected.

3.07: According to petitioner, the third respondent do not possess the required qualification and desirable experience. It is stated that the third respondent passed Dental Mechanic course only on 13.12.95 and the notification is dated 10.10.96. Thus within 10 months from qualifying himself, he made an application and that itself establishes that he has not put up one year experience. It is alleged that he had produced a forged certificate and the first respondent accepted it.

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3.08: The prayer of the petitioner is to issue a writ of Certiorarified Mandamus to call for the records of the first respondent and verify the records and note the truth and quash the selection of the third respondent and select the petitioner in the said post.

3.09. The records are called for, verified and truth is revealed.

4.00: Counter:-

4.01: The first respondent the college, has filed the counter. In paragraph No.4 it is stated that the Selection Committee consisting of the Chief Secretary to Government of Pondicherry as the Chairman and the Principal of the institution as a member Secretary. The other members are Finance Secretary, the Health Secretary to Government and the Director of Health and Family Welfare. Very responsible persons holding Senior Official posts of the State are in the selection committee. But, very unfortunately, none of them have participated in the selection. The selection is a big farce.

4.02: It is stated that the Employment Exchange has sponsored two candidates to the post of Dental Mechanic and 30 candidates have submitted applications in response to their advertisement and out of them 7 application were rejected as they were found to be not in order and 23 candidates were called for practical test and interview. While so, only 17 candidates have appeared for practical test and 7 candidates were called for interview for two posts.

4.03: Interestingly the counter is silent, why 7 out of 23 are called for interview. The first respondent thought that Court will not verify the original file hence, crucial facts are not disclosed in the counter. But verification of original file clarifies that the Board resolved to call 1:3 candidates for interview as per merit list. Then only 6 candidates are to be called for interview but the first respondent accommodated the 7th candidate, who is no other than third respondent who is at serial No.7 of the merit list. In fact, he should not have been a candidate for selection.

4.04: In the counter, the marks obtained by each candidate are furnished by the first respondent as under:

Sl.No.	Name	Marks obtained (out of 50)
1	K.K.Baskaran	30
2	K.Arunraj	30
3	P.Shankar	28
4	P.Kumaravel	26
5	S.Ravi	24
6	K.Sujitkumar	24

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Sl.No.	Name	Marks obtained (out of 50)
7	D.Karthik	24

4.05: Thus, the petitioner is shown at serial No.5 and the third respondent is shown at Serial No.7.

4.06: The counter is also disclosing the total marks obtained by each candidate in the practical test as well as interview and the same is reproduced:

Name of the candidate	Marks obtained in		Total Marks (100)
	Practical Test 50 Marks	Interview 50 Marks	
1.K.K.Bhaskaran	30	15	45
2. K.Arunraj	30	30	60
3. P.Shankar	28	16	44
4. P.Kumaravel	26	40	66
5. S.Ravi	24	7	31
6. K.Sujitkumar	24	10	34
7. D.Karthik	24	38	62

4.07: It is clear that the third respondent, who has secured less marks in practical test and figured at Serial No.7 in the merit list is pushed up in the final merit list by awarding maximum marks in the interview. All other including those at S.No.1 to 3 in the merit list of the practical test are denied selection. The petitioner with 7 years experience is awarded 7 marks in the interview.

4.08: It is stated in the counter that the third respondent at S.No.7 has secured 24 marks out of 50 in the practical examination but awarded 38 marks out of 50 marks in the interview and thereby, his total marks are 62 out of 100 whereas the petitioner secured 24 marks out of 50 in the practical tests, but could get only 7 marks out of 50 in the interview thereby his total marks are 31.

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4.09: In paragraph No.9 of the counter some important facts are disclosed.

4.10: Originally call letters were sent to 22 candidates only and call letter was not sent to the third respondent as he did not enclose copy of S.S.L.C. mark list and other documents. On hearing the same, the third respondent sent a letter on 29.05.1998 together with copies of testimonials with a request to send a call letter. His plea was considered on humanitarian grounds and a telegram was sent to him at eleventh hour to attend the test on 15.6.1998.

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4.11: This procedure of sending telegram adopted by the first respondent is against its notification.

4.12: It is stated that the decision of the Selection Committee is final and the petitioner cannot question the same.

Counter of the third respondent:

4.13: The third respondent also filed a counter. He stated that he passed the Dental Mechanic Examination in the month of June 1995. He applied for the post in response to the notification dated 10.10.1996 and he participated in the practical test and interview and he was selected and it is purely on merit.

4.14: He has also taken a stand that the experience of one year is desirable qualification and it is not essential. It is stated that after completion of the course in June 1995, he has joined the private clinic and gained experience of one year in Dental Mechanic.

5.00: Agruments

5.01: Heard arguments of both sides.

5.02: Shri.Vinoth Subramani, learned counsel appearing for the petitioner and Shri.K.K.Sasidharan, learned Additional Government Pleader, Pondicherry appeared for the first and second respondents and Shri.K.Rajkumar, learned counsel appeared for the third respondent.

6.00: Points

6.01: The points for determination are

(i) whether the selection for the post of Dental Mechanic was held properly by the first respondent?

(ii) Whether the appointment of third respondent as Dental Mechanic is illegal?

(iii) Whether the petitioner is entitled for appointment?

6.01: Point 1:

(i) Admittedly the first respondent is an autonomous institution under the Government of Pondicherry. It is a Government Dental College and public institution. The counter of the first respondent is silent with regard to the internal rules of the college for selection of candidates for filling various posts. It is stated that there are no specific marks prescribed for written examination and so also for interview till 1998.

It is stated that after 1998, i.e., after this recruitment the Dental college is following a specific procedure and accordingly 80 marks are fixed for the written/practical examination and 20 marks are fixed for interview. It is stated that prior to 1998 and at the time of recruitment in question, there is no such guideline fixing any marks for practical and

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for interviews.

(ii) The notification dated 1.10.96 is silent with regard to conducting of any written examination. At the bottom of the notification, it is stated that as it is not possible to call all the candidates for interview, the applications will be shortlisted for the purpose and the decision of duly constituted Screening Committee will be final. It is also stated that applying for the post advertised does not automatically entitle an applicant to be called for interview. Thus, the notification is silent with regard to conducting written examination or practical test and the marks prescribed for written or the interview.

(iii) Before I embark upon deciding the point, I may have to note the legal principles as settled by the Apex Court in such selections.

In Ashok Kumar Yadav v. State of Haryana // AIR 1987 SUPREME COURT // 454, the Supreme Court held as follows :

> "25. Glenn Stahl has pointed out in his book on Public Personal Administration that the viva voce test does suffer from certain disadvantages such as the difficulty of developing a valid and reliable oral test, the difficulty of securing a reviewable record of an oral test and public suspicion of the oral test as a channel for the exertion of political influence and, as pointed out by this Court in Ajay Hasia's case (AIR 1981 SC 487) (supra), also of other corrupt, nepotistic or extraneous considerations, but despite these acknowledged disadvantages, the viva voce test has been used increasingly in the public personnel testing and has become an important instrument whenever tests of personal attributes are considered essential. Glenn Stahl proceeds to add that "no satisfactory written tests have yet been devised for measuring such personnel characteristics as initiative, ingenuity and ability to elicit co-operation, many of which are of prime importance. When properly employed, the oral test today deserves a place in the battery used by the technical examiner." There can therefore be no doubt that the viva voce test performs a very useful function in assessing personnel characteristics and traits and in fact tests the man himself and is therefore regarded as an important tool along with the written examination. Now if both written examination and viva voce test are accepted as essential features of proper selection in a given case, the question may arise as to the weight to be attached respectively to them. "In the case of admission to a college for

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instance", as observed by Chinnappa Reddy. J. in Liladhar's case (AIR 1981 SC 1777). "where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has perforce to be given to performance in the written examination" and the importance to be attached to the viva voce test in such a case would therefore necessarily be minimal. It was for this reason that in Ajay Hasia's case this Court took the view that the allocation of as high a percentage of marks as 33.3% to the viva voce test was "beyond all reasonable proportion and rendered the selection of the candidates arbitrary". But, as pointed out by Chinnappa Reddy. J., "in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way subject to basic and essential academic and professional requirements being satisfied". There may also be services "to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise" and in case of such services where sound selection must combine academic ability with personality promise, some weight has to be given to the viva voce test. There cannot be any hard and fast rule regarding the precise weight to be given to the viva voce test as against the written examination. It must vary from service to service according to the requirement of the service, the minimum qualification prescribed, the age group from which the selection is to be made, the body to which the task of holding the viva voce test is proposed to be entrusted and a host of other factors. It is essentially a matter for determination by experts. The Court does not possess the necessary equipment and it would not be right for the Court to pronounce upon it, unless to use the words of Chinnappa Reddy, J. in Liladhar's case "exaggerated weight has been given with proven or obvious oblique motives."

26. We may now, in the background of this discussion, proceed to consider whether the allocation of as high a percentage of marks as 33.3% in case of ex-service officers and 22.2% in case of other candidates, for the viva voce test renders the selection process arbitrary. So far as ex-service officers are concerned, there can be no doubt that

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the percentage of marks allocated for the viva voce test in their case is unduly high and it does suffer from the vice of arbitrariness. It has been pointed out by the Division Bench in a fairly elaborate discussion that so far as the present selections in the category of ex-service officers are concerned, the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination. The minimum marks required to be obtained in the written examination for eligibility for the viva voce test are 180 and as against these minimum 180 marks, the highest marks obtained in the written examination in the category of ex-service officers were 270, the spread of marks in the written examination thus being only 90 marks which works out to a ratio of 22.2%. But when we turn to the marks obtained in the viva voce test, we find that in case of ex- service officers the lowest marks obtained were 20 while the highest marks secured were 171 and the spread of marks in the viva voce test was thus as wide as 151 in a total of 200 marks, which worked out to an inordinately high percentage of 76. The spread of marks in the viva voce test being enormously large compared to the spread of marks in the written examination, the viva voce test tended to become a determining factor in the selection process, because even if a candidate secured the highest marks in the written examination he could be easily knocked out of the race by awarding him the lowest marks in the viva voce test and correspondingly, a candidate who obtained the lowest marks in the written examination could be raised to the topmost position in the merit list by an inordinately high marking in the viva voce test. It is therefore obvious that the allocation of such a high percentage of marks as 33.3% opens the door wide for arbitrariness and in order to diminish, if not eliminate, the risk of arbitrariness, this percentage needs to be reduced. But while considering what percentage of marks may legitimately be allocated for the viva voce test without incurring the reproach of arbitrariness, it must be remembered that ex-service officers would ordinarily be middle aged persons of mature personality and it would be hard on them at that age to go through a long written examination involving 8 subjects and hence it would not be unfair to require them to go through a shorter written examination in only 5 subjects and submit to a viva voce test carrying a higher

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percentage of marks than that might be prescribed in case of younger candidates. The personalities of these ex-service officers being fully mature and developed, it would not be difficult to arrive at a fair assessment of their merits on the basis of searching and incisive viva voce test and therefore in their case, the viva voce test may be accorded relatively greater weight. But in any event the marks allocated for the viva voce test cannot be as high as 33.3%.

27. The position is no different when we examine the question in regard to the percentage of marks allocated for the viva voce test in case of persons belonging to the general category. The percentage in the case in the of these candidates is less than that in the case of ex-service officers, but even so it is quite high at the figure of 22.2. Here also it has been pointed out by the Division Bench by giving facts and figures as to how in the case of present selections from the general category the spread of marks in the viva voce test was inordinately high compared to the spread of marks in the written examination so that a candidate receiving low marks in the written examination could be pulled up to a high position in the merit list by inordinately high marking in the viva voce test. The viva voce test in the general category, too, would consequently tend to become a determining factor in the process of selection, tilting the scales in favour of one candidate for the other according to the marks awarded to him in the viva voce test. This is amply borne out by the observations of the Kothari Committee in the Report made by it in regard to the selections to the Indian Administrative Service and other allied services. The competitive examination in the Indian Administrative Service and other allied services also consists of a written examination followed by a viva voce test. Earlier in 1948 the percentage of marks allocated for the viva voce test was 22 and it was marginally brought down to 21.60 in 1951 and then again in 1964, it was scaled down to 17.11. The Kothari Committee in its Report made in 1976 pleaded for further reduction of the percentage of marks allocated for the viva voce test and strongly recommended that the. viva voce test should carry only 300 out of a total of 3000 marks. The Kothari Committee pointed out that even where the percentage of marks allocated for the viva voce test

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was 17.11, nearly 1/4th of the candidates selected owed their success to the marks obtained by them at the viva voce test. This proportion was regarded by the Kothari Committee as somewhat on the high side". It is significant to note that consequent upon the Kothari Committee Report, the percentage of marks allocated for the viva voce test in the competitive examination for the Indian Administrative Service and other allied services was brought down still further to 12.2. The result is that since the last few years, even for selection of candidates in the Indian Administrative Service and other allied services where the personality of the candidate and his personal characteristics and traits are extremely relevant for the purpose of selection, the marks allocated for the viva voce test constitute only 12.2% of the total marks. Now if it was found in the case of selections to the Indian Administrative Service and other allied services that the allocation of even 17.11 % marks for the viva voce test was on the higher side and it was responsible for nearly 1/4th of the selected candidates securing a place in the select list owing to the marks obtained by them at the viva voce test, the allocation of 22.2% marks for the viva voce test would certainly be likely to create a wider scope for arbitrariness. When the Kothari Committee, admittedly an Expert Committee, constituted for the purpose of examining recruitment policy and selection methods for the Indian Administrative Service and other allied services took the view that the allocation of 17.11 % marks for the viva voce test wag on the higher side and required to be reduced, it would be legitimate to hold that in case of selections to the Haryana Civil Services (Executive Branch) and other allied services, which are services of similar nature in the State, the allocation of 22.2% marks for the viva voce test was unreasonable. We must therefore regard the allocation of 22.2% of the total marks for the viva voce test as infecting the selection process with the vice of arbitrariness.

28. But the question which then arises for consideration is as to what is the effect of allocation of such a high percentage of marks for the viva voce test, both in case of ex-service officers and in case of other candidates, on the selections made by the Haryana Public Service Commission. Though we have taken the view that the percentage of marks

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allocated for the viva voce test in both these cases is excessive, we do not think we would be justified in the exercise of our discretion in setting aside the selections made by the Haryana Public Service Commission after the lapse of almost two years. The candidates selected by the Haryana Public Service Commission have already been appointed to various posts and have been working on these posts since the last about two years. Moreover the Punjab Civil Service (Executive Branch) Rules 1930 under which 33.3% marks in case of ex-service officers and 22.2% marks in case of other candidates, have been allocated for the viva voce test have been in force for almost 50 years and everyone has acted on the basis of these rules. If selections made in accordance with the prescription contained in these rules are now to be set aside, it will upset a large number of appointments already made on the basis of such selections and the integrity and efficiency of the entire administrative machinery would be seriously jeopardised. We do not therefore propose to set aside the selections made by the Haryana Public Service Commission though they have been made on the basis of an unduly high percentage of marks allocated for the viva voce test.

29. Now if the allocation of such a high percentage of marks as 33.3% in case of ex-service officers and 22.2% in case of other candidates, for the viva voce test is excessive, as held by us, what should be the proper percentage of marks to be allocated for the viva voce test in both these cases. So far as candidates in the general category are concerned we think that it would be prudent and safe to follow the percentage adopted by the Union Public Service Commission in case of selections to the Indian Administrative Service and other allied services. The percentage of marks allocated for the viva voce test by the Union Public Service Commission in case of selections to the Indian Administrative Services and other allied services is 12.2 and that has been found to be fair and just, as striking a proper balance between the written examination and the viva voce test. We would therefore direct that hereafter in case of selections to be made to the Haryana Civil Services (Executive Branch) and other allied services, where the competitive examination consists of a written examination followed by a viva voce test, the marks allocated for the viva voce test

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shall not exceed 12.2% of the total marks taken into account for the purpose of selection. We would suggest that this percentage should also be adopted by the Public Service Commissions in other States, because it is desirable that there should be uniformity in the selection process throughout the country and the practice followed by the Union Public Service Commission should be taken as a guide for the State Public Service Commissions to adopt and follow. The percentage of marks allocated for the viva voce test in case of ex-service officers may, for reasons we have already discussed, be somewhat higher than the percentage for the candidates belonging to the general category. We would therefore direct that in case of ex-service officers, having regard to the fact that they would ordinarily be middle aged persons with personalities fully developed, the percentage of marks allocated for the viva voce test may be 25%. Whatever selections are made by the Haryana Public Service Commission in the future shall be on the basis that the marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to the general category and 25% in case of ex-service officers."

In Dr.Keshav Ram Pal v. U.P.Higher Education Services Commission // 1986 (1) Supreme Court Cases 671 //, the Supreme Court observed as under :

"Ajay Hasia v. Khalid Mujib //AIR 1981 SC 487 : (1981) 1 SCC 722 : 1981 SCC (L&S) 258//: [SCC p.744, para 18, SCC (L&S) pp.277-78, para 18]

The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates, but in the absence of any better test for measuring personal characteristics and traits, the oral interview test must, at the present stage, be regarded as not irrational or irrelevant though it is subjective and based on first impression, its result is influenced by many uncertain factors and it is capable of abuse. We would, however, like to point out that in the matter of admission of colleges or even in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and, moreover, great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

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The observations in Ajay Hasia case have been explained in Lila Dhar v. State of Rajasthan// (1981) 4 SCC 159 : AIR 1981 SC 1777 : 1981 SCC (L&S) 588// and what has been said in Lila Dhar case has been approved by a Constitution Bench of this Court, speaking through Bhagwati, J.(as he then was) in Ashok Kumar Yadav v. State of Haryana //(1985) 4 SCC 417 : 1986 SCC (L&S) 88 //. In Lila Dhar case, it was pointed out by this Court : (SCC pp.162-4, paras 4 to 6)

The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

... How should the competitive examination be devised ? ...

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation , effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the Interview Board.

Thus, the written examination assesses the man's intellect and the interview test the man himself and "the twain shall meet" for a proper selection. If both written examination and interview tests are to be essential features of proper selection, the question may arise as to the weight to be attached respectively to them. In the case of admission to a college, for

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instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has perforce to be given to performance in the written examination. The importance to be attached to the interview test must be minimal. That was what was decided by this Court in Periakaruppan v. State of T.N.//(1971) 1 SCC 38//, Ajay Hasia v. Khalid Mujib Sehravardi, and other cases. On the other hand, in the case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied. To subject such persons to a written examination may yield unfruitful and negative results, apart from its being an act of cruelty to those persons. There are, of course, many services to which recruitment is made from younger candidates whose personalities are on the threshold of development and who show signs of great promise, and the discerning may in an interview test, catch a glimpse of the future personality. In the case of such services, where sound selection must combine academic ability with personality promise, some weight has to be given, though not much too great a weight, to the interview test."

6.02: Point.2:

(i) The notification dated 1.10.96 for the post of Dental Mechanic clearly says that by the date of application, the person should have qualified S.S.L.C. or its equivalent and passed Dental Mechanic Examination conducted by any recognized Institution. It further says that an experience of more than one year in a Dental College recognized by the Dental Council of India is desirable.

(ii) In the instant case, according to the third respondent, he passed the examination of Dental Mechanic in the month of June 1995 and he studied in the Vinayaka Mission Sankarachariar Dental College at Salem. According to petitioner, the third respondent passed the examination only on 13.12.1995. He has furnished the information that the third respondent passed Dental Mechanic course on 13.12.1995 at Vinayaka Mission Sankarachariar Dental College at Salem. Thus, a specific date is furnished by the petitioner and with the name of institution. If it is taken into consideration, the third respondent passed the examination 10 months prior to notification. So, he cannot possess experience of one year.

The third respondent did not disclose the date of his passing the

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Dental Mechanic Examination. He did not disclose the name of the private clinic where he gained the experience of more than one year. It is fatal to the case of the 3rd respondent. In para 5 of the affidavit, the petitioner has clearly stated that the 3rd respondent passed Dental Mechanic Course only on 13.12.1995. This fact was not specifically denied by the respondents. Whether this allegation is true or false is not stated in the counter. The 3rd respondent pleaded that he passed the course in June 1995. He did not furnish the date of passing the course and did not produce any certificate. If it is a fact that the 3rd respondent passed the course on 13.12.1995 it is clear that the 3rd respondent has produced false and fake experience certificate. Whether experience is necessary or desirable is immaterial, but if a false experience certificate is produced, it is a serious matter and it cannot be viewed lightly. The 3rd respondent did not produce any documents before this Court. Hence the contentions of the petitioner are to be accepted. It is a clear case that 1st and 2nd respondents called the 3rd respondent for test without proper verification of documents.

(iii) At this stage, it is relevant to note that the notification of the first respondent. In the notification under the head of GENERAL, it is stated that application with photograph, attested copies of certificates, mark lists and other testimonials including teaching experience shall reach the Principal on or before 04.11.1996. Thus enclosing attested copies of marks list etc., is mandatory. The notification further says that it is not possible to call all the candidates for interview, therefore, the applications will be shortlisted by the Screening Committee and the decision of the Screening Committee will be final in this regard.

Thus the combined reading of the above clarifies that any incomplete application such as not enclosing attested copies of Certificates, marks list etc. will be short listed and the decision is final.

While so, in the instant case, even according to the first respondent, the name of the third respondent is not included in the list of candidates to be called for test. The reason for not including the name of the third respondent is that he has not sent his copies of testimonials. Thus, the Screening Committee has taken a decision not to call the third respondent to the test while shortlisting the applications. It is clearly stated in the counter of the first respondent that only 22 persons are called for test. The said list of 22 persons are excluding the 3rd respondent. While so at a later date, the first respondent has considered the case of 3rd respondent on humanitarian grounds and included his name as 23rd candidate and permitted him for the test. This Court is unable to understand why the cases of other 7 persons is not considered on the same humanitarian grounds. According to the contents of counter of 1st respondent in paragraph No.7, 30 applications are received and 7 applications were rejected as they were not found to be in order and 23 are accepted. While so in Para 9 of the same counter, it is clarified that originally 22 call letters are sent and the call letter to 3rd respondent was not sent as he

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sent incomplete application. But it is clear that he is included as 23rd candidate. Thus the application of the third respondent was originally rejected by the screening committee and this decision has become final. But at the request of 3rd respondent his name is included and a telegram was sent to him to appear to test. This fact is sufficient to hold that the selection of the third respondent is motivated and it is for extraneous reasons.

(iv) From close perusal of the above admitted facts, it is clear that the third respondent passed the Dental Examination only in the year 1995 and he applied for the post in 1996 and it is doubtful whether he is having one year experience in teaching as desired. Apart from that as per the counter affidavit of the first respondent. The third respondent was not called for test, but his name was included in the last minute and through teleg1ram he was called for interview.

(V) All the above acts are clearly establishing the mala-fide intention of the first respondent to accommodate the third respondent in the job.

This mala-fide intention is further established when the record produced by the first respondent. It is perused.

(vi) Unethical Selection:

(a) Three members are constituted as the Selection Committee for filing the post of Dental Mechanics. They are:

1.Dr.V.Ramesh, Professor and Head of the Department.

2.Dr.Suma, Assistant Professor, Head of the Department of Prothetic Dendistry.

3.Dr.G.Sivagami, Department of Prothetic Dendistry.

(b) The file of the University discloses that after awarding the marks in the practical and clinical test which was conducted on 15.06.1998 at 8.00 a.m, all the above three members of the Selection Committee have signed.

(c) Whereas after awarding marks in the interview, there is no signature of any of the members of the committee.

(d) At page Nos.25, 27 of the file, the interview marks for the post of Dental Mechanic are noted. They are written with a red sketch pen and the third respondent is allotted 38 marks out of 50 marks and the petitioner was given only 7 marks out of 50. None of the Selection Committee members have signed on this mark sheet of oral interview. The identity of the author who has allotted 38 marks in the interview is not disclosed through the file and the first respondent did not clarify this fact in the counter or during arguments. Admittedly, if the selection committee has not allotted interview marks, if so maximum marks are

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allotted to the third respondent. It is a mystery and mockery of public employment.

(e) Therefore, it is clear that only for the written examination i.e. practical and clinical test, the Selection Committee members have participated and awarded the marks and signed on the mark sheet, whereas for the interview there is no signature of any of the members of the Selection Committee and some third force has put marks of choice and selected the candidates.

(f) This fact alone is sufficient to declare that the first respondent has not conducted the examination properly and hence the examination is liable to be set aside. The selection of any candidate under the said selection examination is illegal because they did not adopt the proper procedure.

(g) The original file of the college which was produced before this Court was kept in a sealed cover and directed to be sent to Chief Secretary the second respondent along with the copy of this order to verify and initiate necessary action. An enquiry for all the lapses pointed in this order must be held forthwith and take suitable action.

(h) The other illegality noticed by the Court is that after the examination, there was a meeting on 15.6.1998 at 3.00 p.m. The proceedings of the meeting discloses that total number of applications received for the Dental Mechanic are 30 and 7 applications were rejected. 23 applicants are called for test. 17 candidates have appeared for the practical and clinical test. While so, 7 candidates have been called for interview.

(i) It is stated in the file that as per the decision taken in the Governing Body Meeting held on 12.11.97, the candidates to be invited to attend for personal interview is in the ratio of 1:3, on merit basis.

(j) If that be the case, for two posts only 6 candidates should be called for interview. But 7th candidate was also called. In the counter of the first respondent in paragraph No.7, it is clearly stated that the third respondent is also called though he is shown as 7th person. Why? This is not explained. In fact, only 6 candidates should have been called. But the third respondent has been accommodated as 7th candidate which is against to the decision taken by the governing Body in their meeting on 12.11.97. The first respondent did not explain why they have acted against to the decision of the Governing Body and called the 7th candidate. The decision of the Registrar vide MGDCH/152/A1/98 dated 15.06.1998 discloses that the name of the third respondent is included as 7th candidate to appear before the Selection Committee for interview.

While so, the decision of the Governing Body is that only 6 candidates alone are to be called for interview. But surprisingly, the first respondent has chosen to include the name of the third respondent who was

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finally awarded 38 marks out of 50 marks in the interview by an unknown force through unsigned mark list: whereas as the other persons who secured the maximum marks in the practical test for example, Mr.K.K.Baskaran 30 marks, Mr.K.Arunraj 30 marks, Mr.P.Shankar 28 marks are given less marks in the interview. As per the merit list of the practical test, Mr.K.K.Baskaran, Mr.K.Arunraj and Mr.P.Shankar are on the top of the list as 1,2,3, whereas, the third respondent is shown as the 7th candidate in the meritorious list but he was awarded maximum marks in the interview and finally he was selected. What more do the Court require except to condemn the authority for indulging in malpractice: It is high time that such individuals should be ousted from public places to maintain the sanctity of such offices:

(vii) In the above circumstances, this Court has no hesitation to hold that the first respondent did not adopt proper procedure for selection and by adopting illegal and unethical method, the third respondent was selected into the post. Therefore, his selection is liable to be quashed. The Chief Secretary of the State is directed to take appropriate steps in the matter and select meritorious persons: It is made clear that the third respondent shall not be permitted to appear for any test as he is not entitled to claim the call letter.

6.03: Point 3:

The petitioner is praying this Court to select him to the post. This Court cannot do this exercise. The petitioner has secured only 24 marks in the practical. The petitioner has stated that in the interview only 3 questions were put to him. Therefore, the fact of conducting interview is established and minimum marks are allotted to him. There is no record before this Court to know the actual marks awarded by the Selection Committee in the interview. It is the job of the State to select the best candidate. Therefore, the prayer of the petitioner to select him cannot be accepted.

7.00: In the result, the selection of third respondent to the post of Dental Mechanic is quashed.

The 2nd respondent, Chief Secretary, is directed to take immediate steps in the matter and complete the process of proper selection expeditiously. The second respondent is further directed to initiate necessary action in the matter to know the truth behind the entire episode and take suitable action.

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The writ petition is partly allowed with costs of Rs.10000/- to the petitioner payable by 1st respondent and 3rd respondent equally.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sgl

To
1. The Principal
   Mahathma Gandhi Dental College and Hospital,
   Old Secretariat Building,
   Pondicherry-605 001.

2. The Chief Secretary cum-Chairman,
   The Government of Pondicherry Union Territory,
   Pondicherry.

3. The Chief Secretary,
   The Government of Pondicherry Union Territory,
   Pondicherry.

+ 1 CC To Mr. K.Raj Kumar, Advocate SR NO. 61448

+ 1 CC to the Government Pleader[Pondicherry] SR NO 61399

W.P.No.949 of 1999

mj[co]
Gp/16.12.

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